



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Salt Lake Field Office  
2370 South 2300 West  
Salt Lake City, Utah 84119

RECEIVED

MAY 17 2001

DIVISION OF  
OIL, GAS AND MINING

5/10/20

MAY 14 2001

IN REPLY REFER TO:

3809/3715  
U-69380  
(UT-023)

Certified Mail Number 7099 3220 0002 6605 6878  
Return Receipt Requested

### DECISION

Mr. Gary Mullard	:	43 CFR 3809: Surface Management
Northern Stone Supply	:	43 CFR 3715: Use and Occupancy
P.O. Box 249	:	Notice of Noncompliance
Oakley, Idaho 83346	:	

#### Notice of Noncompliance for the Expansion of Operations Beyond Area Authorized in Plan of Operations and for the Unauthorized Construction of Fence on Public Lands

On March 31, 1993 this office approved your Plan of Operations to conduct mining and milling activities on your Turquoise Stone Placer mining claim (UMC 132860) and Turquoise Stone mill sites # 2 and #3 (UMC 132861 and 347333-347334) located in T. 13 N., R. 13 W., Section 18. Your Plan of Operations was approved for a combined surface disturbance of 7.417 acres. A portion of that acreage was for an airfield runway covering a surface area of 0.918 acres on your Turquoise Stone #4 and #5 mill sites. On September 22, 1994, your proposal to construct the runway was withdrawn, thereby reducing the total acreage authorized under your Plan to 6.5 acres.

On August 8, 1994 you were issued a Notice of Noncompliance for failure to provide a bond for reclamation of the surface disturbance associated with your quarrying and mill site activities in the Turquoise Stone area. Because your Plan had been approved for an operation 6.5 acres in size, the amount for reclamation was determined to be \$2,000.00 per acre, or \$13,000.00 (6.5 acres X \$2,000/acre). On October 11, 1994, you submitted a reclamation bond for \$13,000.00 as required.

Your Plan of Operations was approved for the following areas of surface disturbance:

Access Roads	3.099 Acres
Quarry Areas	.884 Acres
Work & Living Areas	2.525 Acres
Total	6.51 Acres



On August 20, 1998, Lynn Kunzler of the Utah Division of Oil, Gas and Mining inspected and measured the existing and active surface disturbance of your Turquoise Stone area using Global Positioning System (GPS) equipment. His survey indicated that the following areas were disturbed by your quarrying and stockpiling activities at the time of his inspection: northernmost quarry: 1.52 acres; southern quarry: 1.59 acres; small stockpile/yarding area located northwest of main stockpile area: 0.33 acres; and main stockpile area: 3.33 acres. When the acreage for the existing access roads are included (3.099 acres), the aggregate total surface disturbance as of August 20, 1998 was 9.87 acres. From the date your Plan was approved by the BLM until August 20, 1998 you had increased the surface disturbance on your Turquoise Stone placer claim and mill sites by 3.36 acres. This additional surface disturbance was not authorized by the BLM, nor was it covered by a reclamation plan or reclamation bond.

On November 2, 2000, Salt Lake Field Office Geologists Michael Ford and Cheryl Martinez conducted a second survey of your Turquoise Stone area using GPS equipment. The main focus of their survey was to determine the current acreage disturbed in the main stockpile area that is located within the boundaries of the Turquoise Stone #2 and #3 mill sites, and the acreage disturbed by your unauthorized mining of common variety mineral materials from the Turquoise Stone #4 mill site. Using information developed by Lynn Kunzler on August 20, 1998, and the subsequent GPS survey of area, the aggregate total surface disturbance as of November 2, 2000 was as follows:

Access Roads:	3.099 Acres
North & South Quarry Areas:	3.11 Acres
Small Stockpile/Yarding Area:	0.33 Acres
Work & Living Areas:	5.77 Acres
Area in Turquoise Stone #4 mill site:	<u>2.36 Acres</u>
Total	14.67 Acres

It is apparent from these GPS surveys that your quarry and stockpiling operations have expanded from a 6.5 acre area of surface disturbance authorized on March 31, 1993 to the present day surface disturbance of 14.67 acres. This represents an increase of 8.17 acres above the 6.5 acres of surface disturbance authorized under your Plan of Operations. This additional acreage is not currently covered under an appropriate reclamation plan or reclamation bond.

In your submitted map for your Plan of Operations, dated November 10, 1992, you show a fence which surrounds the perimeter of your Turquoise Stone placer mill site claim, your Turquoise Stone #2 and #3 mill sites and a portion of the southeast corner of your Turquoise Stone Placer Mining Claim. An inspection of your claim and mill site area on August 22, 2000 indicates that after your Plan was approved on March 31, 1993, you constructed a fence along the eastern, southern and western perimeter of your Turquoise Stone #4 mill site. The construction of this fence was not authorized and was not part of any Plan approval by the BLM or Plan modification submitted by Northern Stone. The construction of a fence and the unauthorized enclosure of Public Lands gives the public the impression that the lands within the fence are privately owned, which they are not. Although Northern Stone has applied for patent to the Turquoise Stone



placer mining claim (UMC 132860) and the Turquoise Stone placer mill site (UMC 132861), until the patent has been issued, all of the lands within Section 18, T. 13 N., R. 13 W. are Public Lands which must be managed by the BLM under Surface Management regulations at 43 CFR 3809, Use and Occupancy regulations at 43 CFR 3715 and any other applicable Federal regulations. In addition to the construction of the unauthorized fence, you continue to block the BLM from reasonable access to your project area by placing a padlock on the main gate located on the Rock Canyon Road.

In 1996, the BLM established regulations at 43 CFR 3715 which are intended to manage the use and occupancy of the Public Lands for the development of locatable mineral deposits by limiting such use or occupancy to that which is reasonably incident. The placement of gates, permanent structures, and occupancy on a mining claim must be authorized under regulations at 43 CFR 3715. Your use and occupancy of the Turquoise Stone mining claims and mill sites, including the placement of any fences, locked gates, warning signs or other restrictions to public access of these Public Lands must comply with these regulations. We have enclosed a copy of these regulations for your use.

Your expansion of mining and milling activities on the Turquoise Stone #2, #3 and #4 mill sites beyond the area authorized under your Plan approval or sufficiently bonded for reclamation, and the construction of an unauthorized fence around the eastern, southern and western perimeter of the Turquoise Stone #4 mill site has resulted in unnecessary or undue degradation to Public Lands, for which you are hereby being issued a Notice of Noncompliance.

As described at 43 CFR 3809.601, if you fail to timely comply with a Noncompliance Order, the BLM may issue you a Suspension Order or an Enforcement Order, either of which could require that you cease or suspend all operations in the project area until your operation is in compliance. If an Enforcement Order is issued and you fail to correct the violation(s) within the time specified, BLM may revoke your Plan of Operations. If your Plan of Operations is revoked, you will not be permitted to conduct operations on the Public Lands in the project area except for reclamation and other measures specified by the BLM.

In order to bring Northern Stone into compliance with Federal regulations at 43 CFR 3809 and 3715, within 30 days of receipt of this letter, you must do the following:

1. Submit a new Plan of Operations which will describe the existing and/or proposed operation at a level of detail sufficient for BLM to determine that the Plan prevents unnecessary or undue degradation to Public Lands. The information required for a complete Plan of Operations is outlined in the Surface Management regulations at 43 CFR 3809.401. We have enclosed a copy of these regulations for your use.
2. Remove the fence that encloses the eastern, southern and western perimeter of your Turquoise Stone #4 mill site.
3. Interlock a BLM lock with the lock you have placed on the main gate which is located at the south end of your mining claims and mill sites along the Rock Canyon Road.



4. Under Use and Occupancy regulations at 43 CFR 3715.3-2, you must submit a detailed map that identifies the use and occupancy of the mine site and describes in detail: 1) how the proposed occupancy is reasonably incident; 2) how the proposed occupancy meets the conditions specified in 43 CFR 3715.2 and 3715.2-1; 3) where you will place temporary or permanent structures for occupancy; 4) the location of and reason you need enclosures, fences, gates, and signs intended to exclude the general public; 5) the location of reasonable public passage or access routes through or around the area to adjacent Public Lands; and 6) the estimated period of use of the structures, enclosures, fences, gates and signs, as well as the schedule for removal and reclamation when operations end.

In addition, all areas of unauthorized surface disturbance within the boundaries of the Turquoise Stone #4 mill site must be reclaimed and revegetated to the performance standards described at 43 CFR 3809.420. The optimum time for successful revegetation is from October 15 through November 30 of this year. A list of recommended native seed to use for the revegetation of this area will be provided upon request.

If you do not agree and are adversely affected by this decision, in accordance with 43 CFR 3809.804, you may have the Utah BLM State Director review this decision. If you request a State Director review, the request must be received in the Utah BLM State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to this office. The request must be in accordance with the provisions provided in 43 CFR 3809.805. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a stay is granted by the State Director. Standards for obtaining a stay are given below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the Utah State Director does not make a decision on whether to accept your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You then have 30 days in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass the State Director review, this decision may be appealed directly to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Salt Lake Field Office, located at 2370 South 2300 West, Salt Lake City, Utah, 84119, within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time



the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

If you have any questions, or require additional information, please feel free to contact Michael Ford of my staff at (801) 977-4360.

**GLENN A. CARPENTER**

Glenn A. Carpenter  
Field Office Manager

Enclosures

cc: D. Wayne Hedberg; Utah Division of Oil, Gas and Mining  
Utah State Office (UT-935)